

O'Neill Institute

for National and Global Health Law

Georgetown Law • Georgetown Nursing & Health Studies

REVIEW OF MONTANA'S FOOD SAFETY LAWS WHITE PAPER: ISSUES, OPTIONS AND RECOMMENDATIONS PAPER 1: STANDARDS

A. INTRODUCTION:

This is Paper 1 of a set of papers which outline the issues which need to be addressed in the reform of Montana's food safety laws and the options which exist and our recommendations for the reform of Montana's food safety laws. Paper 1 focuses on issues relating to food safety standards. Paper 2 will address food safety compliance and enforcement issues. Paper 3 will focus on governance issues for the state and local food safety authorities in Montana.

The issues to be addressed in these papers have been identified through our analysis of Montana's food safety statutes and administrative rules and through our discussions with Montana's Food and Consumer Safety Study Group on 29 October 2008 and 3 December 2008. During these discussions, the Study Group identified the aspects of Montana's food safety laws which functioned well or those which were deficient. They also identified where the laws were silent on matters which were essential to the proper operation of the food safety regulatory system.

In section B below, we briefly outline the issues which need to be addressed. We have opted to only briefly explain the issues because our document 'Using the Public Health Framework: A Detailed Analysis of the Food Safety Laws in Montana' sets out some of the issues in considerable detail. Furthermore, many of the issues are well understood by the key stakeholders in Montana and do not need extensive elaboration.

For each of the issues which have been raised, we either present a single recommendation for addressing the problem in question or we present several options for resolving the concern. Our recommendations and options have been developed by using the public health framework and principles which are set out in the document 'Public Health Framework for Reviewing the Montana Code and Administrative Rules for Food and Consumer Safety'. We presented the document at our meeting with the Food and Consumer Safety Study Group on 29 October 2008. We presented a slightly revised version of the document at the meeting with the Study Group endorsed on 3 December 2008. The Study Group endorsed the public health framework and principles as the approach to be used in reviewing and reforming Montana's food safety laws.

The conclusions which the Food and Consumer Safety Study Group and other relevant stakeholders in Montana make about our recommendations and options will form the content of Montana's new food safety laws.

In section B below, we have also included a number of questions for consideration by the Food and Consumer Safety Study Group. The answers to these questions will be valuable information to use in determining how Montana's laws should be revised.

B. ISSUES FOR DISCUSSION AND DECISION:

1) Structure of the food safety laws

- a) **Issue:** Should the current structure of the food safety laws be maintained? At present, there are food safety laws in, for example, the Food, Drug and Cosmetics Act ('FDCA') and rules, the Retail Food Establishments Act ('the Retail Food Act') and rule, the Wholesale Food Establishments Act ('the Wholesale Food Act') and rules, the Schools rules, the Hotels, Motels and Rooming Houses rules, the Bed and Breakfast Establishments rules.
- b) **Options:** Should all the laws be in one statute and one set of rules? Or should they be separated out into different statutes as they are now?
 - i) **Option A:** Montana could adopt a single food safety statute. This would require repeal of the FDCA, the Retail Food Act, the Wholesale Food Act and specific food safety provisions in statutes such as those relating to B and Bs, hotels, motels etc. Ideally, the new statute would incorporate provisions which are found in statutes not currently within the jurisdiction of the DPHHS, such as those within the authority of Department of Livestock.

A more modest aim would be to leave aside provisions which are found in non-DPHHS statutes and to only incorporate into the new statute provisions which are currently under the jurisdiction of the DPHHS. In this single food safety statute, there would be sub-chapters for food standards (from the FDCA), food establishments (with separate parts for retail food establishments and wholesale food establishments to the extent that there is some differences between them which need to be reflected in the law), compliance and enforcement, etc. The advantage of this format would be to offer a single reference point for food safety laws and to avoid having to duplicate provisions in separate food safety provisions (ie, there would be no need for definitions sub-chapter in each statute; there would be no need for a separate compliance and enforcement sub-chapter in each statute). This is the preferred option for reforming Montana's food safety laws.

- ii) **Option B:** Montana could have a number of separate, but complementary and inter-connected food safety statutes. The aim would be to consolidate a number of the provisions on food safety which currently appear in different statutes into a smaller number of statutes. There need to be consistent definitions across all statutes and rules.

(1) Retain the FDCA as a separate statute (with amendments to the current provisions)

(2) Retain the Retail Food Act (but with amendment to the current provisions). The Retail Food Act should be amended to include B and Bs, hotels, motels, hospitals, day cares, schools etc within a definition of ‘food establishments’. If there are specific foods safety provisions which relate to schools, B and Bs etc, these could be included as specific parts in the Retail Food Act. The provisions about the food safety in the statutes relating specifically to B and Bs, campgrounds, schools etc should be removed.

(3) Retain the Wholesale Food Act (but with amendment to the current provisions).

(4) Create a statute to address food safety standards on ‘farms’

Question: Do the categories of ‘Retail Food Establishments’ and ‘Wholesale Food Establishments’ cause any difficulties at present? Do they cover all the establishments which you consider should be regulated by food safety laws?

2) Which establishments should be covered by the food safety legislation?

a) Schools:

i) **Issue:** Schools serve food but are not always subject to inspection for compliance with food safety standards. The rules currently provide that licensure of a school as a food service establishment is not required if it only serves food to staff and students of the school and their guests, but the school is nonetheless required to comply with the rules for food service establishments. The right to inspect a food service establishment at a school does not seem to be premised on the school being licensed as a food service establishment.

ii) Recommendations/ Options:

(1) **Option A:** One option would be to require all establishments, such as schools, which serve food to have a license which is issued by the state/local/county food safety authorities. This would mean that a school may be registered/ licensed to operate as a school, but it would also need to have a separate license to serve food. Being licensed by the food safety authorities would clearly bring the establishment within the jurisdiction of the authority. Schools could be included in the definition of ‘food service establishment’ and therefore covered by the Retail Food Act (or a single food safety statute). We consider this to be the preferred option.

(2) **Option B:** A second option would be to require all state/ county/ local government agencies which license establishments which also serve food to notify the state/ county/ local food safety authority that the licensed establishment serves food. The state/ county/ local food safety authority would then be able to inspect and regulate the establishment but the establishment and

the authority would be spared the burden of having to, respectively, apply for and issue an additional license. The drawback of this approach is that because there is no food service license, it is not possible for the food safety authorities to suspend or revoke any license to serve food. There may also be limits to what steps the authority can take in relation to a food establishment which is not licensed.

b) Hospitals:

- i) **Issue:** Hospitals serve food but are not currently subject to inspection for compliance with food safety standards.
- ii) **Recommendation:** Options A and B in relation to schools also apply to hospitals.

c) Wild game processors

- i) **Issue:** there are inadequate food safety laws applicable to wild game processors. The Retail Food Act §50-50-102(7)(b)(iii) says that the term ‘food service establishment’ does not include ‘custom meat cutters or wild game processors who cut, process, grind, package or freeze game meat for the owners of the carcass for consumption by the owner or the owner’s family, pets, or nonpaying guests’. This means that that wild game processors, who provide processed game meat to persons *who are not the owner of the carcass or who are owners of the carcass but who intend to serve the game meat to persons other than his or her family, guests or pets*, are covered by the Retail Food Act and rules. The question is whether the law should cover wild game processors when they are processing a carcass for an owner of the carcass, even when the only consumers of the carcass will be the owner, his or her family and guests etc.
- ii) **Recommendations:** There does not appear to be a solid public health rationale for excluding wild game processors from the food safety laws in these limited circumstances. They are covered by the laws in relation to some wild game processing, but not covered for exactly the same food handling activity in relation to other groups of consumers. There does not seem to be a defensible reason for giving most members of the public the protection of food safety laws food safety laws, but excluding a small group from protection because they are the owner, family or guests of the animal carcass. This excluded group of consumers is obviously no less susceptible to foodborne illness from the processing of the carcass. Therefore, the definition of ‘food service establishment’ should be amended to cover all retail activities of wild game processors.

d) Bake sales

- i) **Issue:** The private kitchens which is sold at ‘bake sales’ is not covered by the food safety laws. This is because the definition of ‘food service establishment’ in the Retail Food rules excludes ‘a kitchen in a private home if the food is prepared for sale or service at a function such as religious or charitable organization’s bake sale’. However, it is worth noting that ‘bake sales’

themselves are not exempted from the definition of the ‘food service establishment’. They are not required to be licensed if they operate for less than 14 days in each calendar year (§50-5-202(2)) but they are required to register with the local health officer or sanitarian prior to each operation and to follow all of the other standards for food safety. The Retail Food Act also says that the department and the local health authorities may not adopt rules prohibiting the sale of baked goods and preserves by not-for-profit organizations and they may not require that baked goods or preserves sold by non-profit organizations be prepared in certified or commercial kitchens.

The fact that private kitchens which produce goods which are sold to the public are not regulated under the food safety laws is inconsistent with the rationale of protecting the public from the risk of food-borne illness. This exemption of private kitchens seems to be motivated by other public policy goals of allowing community groups to continue their traditional fundraising activities which enable them to operate and deliver valuable community services.

However, it is worth noting that the bake sale itself – the community organizations’ stand or stall where they sell the baked goods – is a ‘food service establishment’ according to the definition in the statute. This means that the bake sale stall is subject to all of the food safety standards.

- ii) **Options:** In conjunction with either of the options below which relate to the regulation of private kitchens producing goods for bake sales, the current regulation of the ‘bake sales’ themselves should remain in place.

(1) Option A: The exemption for private kitchens producing goods for bake sales should be completely removed because it is inconsistent with the public health purpose of the food safety laws. Whilst it is important to support local community organizations which are essential to a vibrant and functioning society, the goal of preventing foodborne illness through food which is retailed to the public should be paramount. The risks of foodborne illness are present in food sold at a bake sale. This food is not ‘safe’ simply because it is made for and sold at a bake sale.

The effect of implementing Option A is that private kitchens producing goods for bake sales would be ‘food service establishments’ (or ‘wholesale food establishments’) and would therefore be regulated by the statute. This would undoubtedly have the effect of reducing or eliminating the production of goods in kitchens of private homes for community organizations’ bake sales. Most owners of private kitchens who bake for bake sales would probably not want to go to the trouble of applying for a license and establishing their kitchen in conformity with the food safety standards. This will have an impact on community organizations’ fundraising activities and capacity.

(2) Option B: An alternate option would be to adopt the approach which is found in the *Food Code* which also exempts private kitchens which produce food for religious or community organizations' bake sales IF the food they produce is not 'potentially hazardous (time/ temperature control for safety) food' AND IF 'the consumer is informed by a clearly visible placard at the sales or service location that the food is prepared in a kitchen that is not subject to regulation and inspection by the regulatory authority'.

This approach serves the public health purpose better than the current regime. It does not allow unlicensed and unregulated kitchens to produce 'potentially hazardous food'. Unlicensed and unregulated kitchens can only produce food which carries some lower risk of foodborne illness. This approach does not serve the public health purpose by regulating the conditions under which the food is produced, but instead operates by arming the consumer with information about the processing of the food. The food may have been prepared in very unsanitary conditions. The information seems intended to cause the consumer to consider whether they purchase and consume the food because it is prepared in a kitchen which is subject to food safety standards. It is not known what impact, if any, the 'warning' has on consumer behavior.

e) Farmers' markets

- i) Issue:** Many sellers of products at farmer's markets are unregulated in relation to food safety. A farmer's market is defined as 'farm premises, a roadside stand owned and operated by a farmer, or an organized market authorized by the appropriate municipal or county authority. The department and local health authorities may not adopt rules prohibiting the sale of baked goods and preserves by persons at farmer's markets (§50-50-103 Retail Food Act), nor may they require that these goods be prepared in certified or commercial kitchens. A license is not required of a gardener, farm owner, or farm operator who sells raw and unprocessed farm products at a farmer's market. A license is not required of a person selling baked good or preserves at a farmer's market (but if the farmer's market is organized by the municipal or county authority, the authority must keep registration records of all individuals and organizations that sell baked goods or preserves at the market) (§50-50-202 Retail Food Act).

The definition of 'farmer's market' covers many different operators, including very small, ad hoc stalls that a farmer may set up on the road where they have an excess of produce. The effect of these laws is that many sellers at a farmer's market may not be licensed (if they only sell farm produce, baked goods or preserves. There is no requirement in the food safety laws that they comply with the applicable food safety standards (cf bake sales where they have to abide by standards even if they do not have to be licensed). This means that unsanitary conditions are not prohibited for these retailers. This is inconsistent with the public health rationale of the food safety laws.

- ii) **Recommendation:** All farmer's markets should be required to be licensed. They should therefore be required to comply with the applicable food safety standards in offering products for retail.

Like with the 'bake sales' above, the kitchens producing the baked goods or preserves for the farmer's market should be licensed and regulated, or they should be exempt only IF the food they produce is not 'potentially hazardous (time/ temperature control for safety) food' AND IF 'the consumer is informed by a clearly visible placard at the sales or service location that the food is prepared in a kitchen that is not subject to regulation and inspection by the regulatory authority'.

Where the products being sold at the farmer's market are raw, unprocessed farm products, these products should be regulated as 'farm produce': see below.

f) Farms

- i) **Issue:** Farms and other places where primary produce is created are generally not regulated for food safety. This has been recognized by many people as a major food safety risk for United States. Some pathogens causing foodborne illness arise in food at the level of the 'farm' and are not removed, and may in fact be spread, at the subsequent processing stage/s. There is considerable support for the development of standards for food safety at the farm level.
- ii) **Recommendation:** We recommend that this issue be held in abeyance for the present. We support the development of laws in this area. The Georgetown University Public Policy Institute currently has a project to develop a model law for produce safety that would be a valuable resource for Montana. We will provide you with a copy of the model law as soon as it is available.

g) Hotels, motels, bed and breakfast places etc

- i) **Issue:** The current food safety statutes and rules do not expressly cover a range of establishments which prepare and serve food, such as hotels, motels, bed and breakfast establishments. However, the food safety standards are sometimes brought to bear on these establishments by way of a provision in the statutes which govern these establishments which says that the food safety laws are to be treated as applying to the establishment. In some other instances, there are detailed food safety laws for a specific type of establishment. In other instances, establishments are not subject to food safety regulations at all.
- ii) **Recommendation 1:** We recommend that all food establishments be regulated by a single or a set of food safety-specific statutes. This means that a range of establishments need to be brought within the jurisdiction of the food safety statutes. This will, in part, involve drafting a definition of 'food establishments' (or some other term) which captures the range of establishments which the state wants to regulate.

For example, ARM 37.111.124, which states that where a food service is operated as an integral part of an establishment (defined as a hotel, motel, tourist room, roominghouse or retirement home), compliance with the Retail Food Establishment rules is required, unless the food service is only available to the residents. This provision should be deleted and hotels, motels, tourist homes, roominghouses and retirement homes should be brought within the definition of 'food service establishment' in the Retail Food Establishment Act. There is no compelling reason which places which serve food to residents only (such as retirement villages) should not be subject to food safety laws.

For example, ARM 37.111.312 – 322 are very detailed provisions regarding food safety for bed and breakfast establishments. Some of the provisions are the same as those which apply to 'food service establishments' generally. Some are specific to bed and breakfast establishments. Bed and breakfast establishments should be brought within the jurisdiction of the Retail Food Establishments Act and subjected the provisions which apply to all food service establishments. If there are provisions which are applicable to bed and breakfast establishments only, these provisions could be included in a separate sub-chapter of the food safety statute/s.

Similar kind of amendments should be made to the statutes and rules governing youth camps, work camps, day care centers and any establishments which serve food to the public.

3) Standards for Food

a) 'Food, Drugs, Cosmetics Act' standards

- i) Issue:** These standards do not apply to food as it is processed or sold in any specific establishment (compare Retail Food Establishments Act and Wholesale Food Establishments). They apply to 'food' generally and therefore overlap with some of the provisions of the Retail Food Establishments Act and the Wholesale Food Establishments Act. There is sometimes a lack of consistency with these other statutes and rules. These standards also draw on the Federal FDCA rules. The FDCA statute and rules needs to be reviewed to identify gaps and overlaps and to streamline the provisions.
- ii) Recommendation:** We refer to the first issue above regarding the consolidation of all food statutes into a single statute or the creation of a streamlined set of interconnected food safety statutes (with the creation of a single statute being our recommendation). We recommend that Montana make the current provisions of the FDCA which relate to food a sub-chapter of a food safety statute Montana There should be a separate statute for drugs and devices and a separate one for cosmetics. Of the current food provisions in the FDCA, we recommend amendments as follows for Parts 1, 2 and 5 which are relevant to food safety:
(1) MCA 50-31-102 regarding the meaning of 'selling' should be deleted and included in the 'definitions' section;

- (2) **MCA 50-31-103:** The definitions section should be reviewed for consistency with the Federal FDCA;
- (3) **MCA 50-31-104:** The department is authorized to adopt by reference the regulations adopted by the food and drug administration. There should be a single provision in the statute which sets out the power of the department to make rules under the statute (and not just in relation to the FDCA), including by reference to regulations adopted by the FDA.
- (4) **MCA 50-31-105:** The department may publish information regarding judgments, decrees and court orders which have been rendered under the chapter. This should be part of a sub-chapter on compliance and enforcement of all food safety laws.
- (5) **MCA 50-31-106:** Inspections and taking of food samples. A revised provision regarding inspections and samples is discussed below. There need only be a single ‘inspections’ provision for the statute which should be part of a compliance and enforcement chapter. There needs to be power to conduct inspections on establishments other than retail and wholesale food establishments, being any establishments ‘in which food is manufactured, processed, packed or held for introduction into commerce’ for the purpose of establishing whether any of the FDCA provisions have been violated.
- (6) **MCA 50-31-107:** Retain definition of ‘false or misleading representations’, but ensure that statute only includes single definition of ‘false or misleading representations’ *unless* a different definition should apply to specific situations.
- (7) **MCA 50-31-108:** This section grants a power to make regulations concerning additives. This should be retained but all powers to make regulations should be grouped together (such as with MCA 50-31-104) and not scattered throughout the statute.
- (8) **MCA 50-31-109:** This section bears on the meaning of ‘unsafe’ and ‘adulterated’. It should be grouped with these sections dealing with these terms.
- (9) **MCA 50-31-110:** This section concerns the meaning of ‘color additives’. Again, this section should be grouped with others which define key terms.
- (10) **MCA 50-31-111:** This section concerns the meaning of labeling and should be grouped with other terms which define the meaning of ‘labeling’.
- (11) **MCA 50-31-201:** This section authorizes the department to adopt food standards. This provision should be with other provisions relating to the powers of the department.
- (12) **MCA 50-31-202:** This section defines ‘adulteration’ of food and should be with other definitions section. The definition of ‘adulteration’ should be constant across the food safety statute unless there is reason for a different definition to be used in certain circumstances.
- (13) **MCA 50-31-203:** This section defines when food is ‘misbranded’ and should be with other definitions section. The definition of ‘misbranded’ should be constant across the food safety statute unless there is reason for a different definition to be used in certain circumstances.

(14) **MCA 50-31-204:** This section concerns the labeling requirements for products in semblance of honey or containing honey. This provision should be deleted and included in the rules only.

(15) **MCA 50-31-208:** This section concerns the sale of hamburger and beef patty mix. This provision should be deleted and included in the rules only.

(16) **MCA 50-31-237:** This section concerns health claims for bottled water. This provision should be deleted and included in the rules only.

(17) **MCA 50-31-501:** This section defines the prohibited acts under the FDCA. This section should be in a sub-part concerning the standards under the FDCA. The section should be amended to provide that prohibited acts include ‘any acts which the rules define as “prohibited acts”’.

(18) **MCA 50-31-502:** This section states that it is unlawful for anyone to sell or offer for sale any honey product. This should be moved to the rules.

(19) **MCA 50-31-503:** This section states that there is no requirement that the department report minor violations of this chapter for the institution of proceedings whenever the department believes that the public interest will be adequately served in the circumstances by a suitable written warning. If this provision were retained, it should be part of the chapter of the statute on ‘Compliance and Enforcement’: see below.

Question: What is the current procedure in Montana for the institution of proceedings – civil or criminal – where there is an alleged violation of one of the food safety laws?

(20) **MCA 50-31-504:** This section provides that before a violation of the FDCA is reported to the state or county attorney for prosecution, the person against whom the proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the department or its designated agent, either orally or in writing and either in person, with regard to the contemplated proceeding. We recommend that this section be deleted. It is unnecessary that the person against whom the proceedings are contemplated be given the opportunity for a hearing prior to the decision about prosecution being made.

Question: What do you think of this provision? How is it working at present?

(21) **MCA 50-31-505:** Each state attorney or county attorney to whom the department reports a violation of this chapter shall cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law.

Question: What do you think of this provision? How is it working at present?

(22) **MCA 50-31-506:** This is the penalties provision in relation to misdemeanors relating to honey or hamburger/ beef patty mix. It would be preferable for the penalties provision to not be linked to very specific misdemeanors and to be linked to more general categories of misdemeanor. There are no penalties provisions other this one. This is a gap and a penalties provisions need to be created for all conduct which constitutes a crime under the statute.

(23) **MCA 50-31-508:** This is an injunction provision relating to violations of honey or hamburger/ beef patty mix provisions. There is no injunction provision other this one. This is a major gap because the statute does not authorize the food safety authorities to apply for an injunction in relation to violations of the FDCA or the rules. A general injunction provision is required and is recommended for the ‘Compliance and Enforcement’ section discussed below.

(24) **MCA 50-31-509:** This provision relates to the detention, tagging, embargoing and destruction of adulterated or misbranded food. This provision should properly form part of the ‘Compliance and Enforcement’ sub-chapter of the statute: see below.

(25) **MCA 50-31-508:** This provision allows for the condemnation or destruction of perishable foods where they are unsound, filthy, decomposed, etc. This provision should be included in the ‘Compliance and Enforcement’ section.

iii) **Recommendation:** A new version of the FDCA rules must reference the most current versions of the Federal FDCA rules.

b) Standards for food establishments

i) **Issue:** There must be current food safety standards for all food establishments, including retail food establishments and wholesale food establishments.

ii) **Options:**

(1) **Option A:** We recommend that the statute include a sub-chapter with standards for ‘food establishments’ to the extent that they are common to retail or wholesale food establishments. If there are standards which are different for retail or wholesale food establishments, then these can be included in separate parts of the statute or rules for ‘retail food establishments’ and ‘wholesale food establishments’.

The statute should include only very basic provisions regarding the standards for ‘food establishments’, with the detailed standards being included in the rules for ‘food establishments’.

For the content of the rules, Montana should adopt the most current version of the Parts 1 – 7 of the FDA Food Code into its *rules*, monitor for further updates and, as soon as an update is available, amend its rules to reflect the most recent version of the Code. The Code could be adopted ‘by reference’ (with or without amendment) or it could be adopted ‘section by section’ into

Montana administrative rules. If Montana is able to adopt the Code by reference, this would be the most straight-forward approach.

The *Food Code* is designed for retail food establishments but many of the provisions seem applicable to wholesale food establishments. If different standards are applicable to retail and wholesale food establishments, these should be included in the statute or rules.

Option B: If Montana were to retain separate statutes for retail and wholesale food establishments, then we recommend that the statutes include only very basic provisions regarding the standards for ‘retail food establishments’ and ‘wholesale food establishments’, with the detailed standards being included in the rules for each type of establishment.

For the content of the rules, Montana should adopt the most current version of the Parts 1 – 7 of the FDA Food Code into its *rules*, monitor for further updates and, as soon as an update is available, amend its rules to reflect the most recent version of the Code. The Code could be adopted ‘by reference’ (with or without amendment) or it could be adopted ‘section by section’ into Montana administrative rules. If Montana is able to adopt the Code by reference, this would be the most straight-forward approach.

The *Food Code* is designed for retail food establishments but many of the provisions seem applicable to wholesale food establishments. If different standards are applicable to retail and wholesale food establishments, these should be included.

(2) ‘food establishments. adopt a single food safety statute with a sub-chapter on ‘food establishments’, we recommend that there only be very basic provisions in the statute regarding the standards for ‘food establishments’, with the detailed standards being included in the rules for ‘food establishments. For the content of the rules, Montana should adopt the most current version of the Parts 1 – 7 of the FDA Food Code into its *rules*, monitor for further updates and, as soon as an update is available, amend its rules to reflect the most recent version of the Code. The Code could be adopted ‘by reference’ (with or without amendment) or it could be adopted ‘section by section’ into Montana administrative rules. If Montana is able to adopt the Code by reference, this would be the most straight-forward approach.

(3) **Option B:** Montana should adopt the most current version of the Parts 1 – 7 of the FDA Food Code into its *rules*, monitor for further updates and, as soon as an update is available, amend its rules to reflect the most recent version of the Code. The Code could be adopted ‘by reference’ (with or without amendment) or it could be adopted ‘section by section’ into Montana administrative rules. If Montana is able to adopt the Code by reference, this would be the most straight-forward approach.

c) Standards for specific items

- **Issue:** Should standards for specific items (such as honey and ground beef and hamburgers) be in the statute or in the rules?
- **Recommendation:** *No*. Standards for specific items should not be in the statute. They should be in the rules only. For example, delete §50-31-204, §50-31-208 and any other specific standards and insert in food safety rules.

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